

REMARKS

Claims 23-24, 27, 29 and 32 are pending in the application. Applicants have amended the Specification to correct the Related Application data. No new matter has been added by the amendment. The amendment has been made to correct the chain of priority for the instant application.

As an initial matter, Applicants thank the Examiner for withdrawing the rejection of certain claim(s) as being anticipated by Admitted Prior Art and for withdrawing the 35 U.S.C. § 103 rejection of various claims as being unpatentable over the Admitted Prior Art in view of House. Applicants also thank the Examiner for withdrawing the double patenting rejection of the claims as being unpatentable over U.S. Patent No. 5,928,279.

Based on the Related Application data in the pending application, the Examiner concluded that the effective filing date of the present application is 12/1/98. The Applicants have corrected the Related Application data by amending the Specification. Based on the correct Related Application data, Applicants respectfully submit that the effective filing date for the application is 4/17/95. The Related Application data, as amended, can be easily verified by examining the faces of the patents identified therein.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102

Shannon et al (USPN 5,641,373)

Because the Examiner concluded that “the effective filing date of the present application is 12/1/98 and NOT 4/17/95,” the Examiner rejected the pending claims as being anticipated by Shannon et al. under 35 USC § 102(b). As noted above, the present application claims priority to Shannon et al. and has an effective filing date that is the same as that of Shannon et al. Therefore, Shannon et al. cannot be used as a reference to reject the application under 35 USC § 102(b).

Schmitt (USPN 5,527,353)

The Examiner rejected claims 23 and 29 under 35 U.S.C. § 102(b) as being anticipated by Schmitt. Applicants respectfully disagree.

Schmitt teaches a prosthesis comprising a textile substrate lined with a polymer liner. Schmitt states that the liner may be made from PTFE. Based on this, the Examiner

concludes that the liner is a PTFE graft. However, such a conclusion directly contradicts Schmitt. Schmitt discusses PTFE grafts in the prior art section of the specification. See, col. 2, ll. 4-16. If the liner described in Schmitt could be equated to a PTFE graft, Schmitt could have described it as such. After all, Schmitt discusses PTFE grafts in the same column of the patent in which he discusses the liner.

The Examiner's conclusion that the textile substrate disclosed in Schmitt is the same as the "reinforcing tape" of the present invention is similarly flawed. The textile substrate disclosed in Schmitt is a "woven" textile sleeve, "which is woven from a plurality of warp ends 5 and filling yarn 7." See, col. 4, l. 65 to col. 5, l. 2. While Schmitt does state that the textile sleeve may be woven from PTFE tape, it is not the same as saying that the textile sleeve is PTFE tape - it is still a textile sleeve that is a composite woven from tape and yarn. Thus, the reinforcing tape of the present invention is not disclosed by Schmitt.

More importantly, though, Schmitt does not disclose or suggest anywhere the important characteristic of the present invention that the tape-reinforced graft as claimed can be enlarged by greater than 5 % without breaking or tearing of the reinforcing tape. Applicants respectfully submit that the Examiner's assumption that Schmitt's prosthesis has this characteristic is without grounds.

The Examiner first assumes that Schmitt would have used a PTFE tape in the manner suggested by the Applicants, which is not true because while Schmitt does state that a PTFE tape could be used to make the textile sleeve, Schmitt teaches weaving tape and yarn to make the sleeve. The Examiner then assumes that Schmitt would have used unsintered PTFE tape. There is simply no basis for that assumption. If anything, a skilled artisan would have used sintered PTFE tape with yarn to weave the sleeve in Schmitt because sintering the sleeve with the yarn would destroy the yarn. Finally, the Examiner simply makes a leap of imagination in assuming that the graft would have been capable of greater than 5% expansion without breaking or tearing of the tape. There is no basis whatsoever in Schmitt for making that claim.

For all of the foregoing reasons, Applicants respectfully request the Examiner to withdraw the rejection of claims 23 and 29 as being anticipated by Schmitt.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

The Examiner rejected various dependent claims under § 103. As discussed above, the independent claims are not anticipated by any of the prior art references. Because the independent claims are free from prior art, claims dependent on the independent claims must also be free from prior art. Therefore, the rejections under § 103 must also be withdrawn.

PETITION FOR EXTENSION OF TIME TO RESPOND

Pursuant to 37 C.F.R. 1.136(a), Applicants hereby request an extension of time for **Three Months** to respond to the above-referenced Office Action. The Commissioner is hereby authorized to charge the required fee of \$950.00 to Deposit Account No. 50-1225 (VAS-4761CONDIV). A duplicate copy of this sheet is enclosed.

CONCLUSION

Accordingly, in view of the above amendments and remarks, it is submitted that this application is now ready for allowance. Early notice to this effect is solicited. If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned at (949) 250-6801.

If an appropriate payment does not accompany or precede this submission, the Commissioner is hereby authorized to charge any required fees, such as under 37 C.F.R. §§ 1.16 or 1.17, including any petition for extension of time, or to credit any overpayment, to Deposit Account No. 50-1225 (VAS-4761CONDIV).

Dated: May 21, 2004

Respectfully submitted,

Edwards Lifesciences LLC

By: 

Rajiv Yadav, Ph.D., Esq.

Registration No. 43,999

Edwards Lifesciences LLC

Law Department

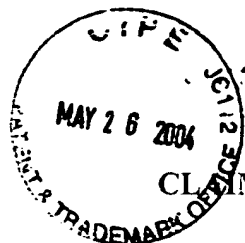
One Edwards Way

Irvine, California 92614

Telephone: (949) 250-6801

Facsimile: (949) 250-6850

Customer No. 30452



CLAIM REJECTIONS UNDER 35 U.S.C. § 103

The Examiner rejected various dependent claims under § 103. As discussed above, the independent claims are not anticipated by any of the prior art references. Because the independent claims are free from prior art, claims dependent on the independent claims must also be free from prior art. Therefore, the rejections under § 103 must also be withdrawn.

PETITION FOR EXTENSION OF TIME TO RESPOND

Pursuant to 37 C.F.R. 1.136(a), Applicants hereby request an extension of time for **Three Months** to respond to the above-referenced Office Action. The Commissioner is hereby authorized to charge the required fee of \$950.00 to Deposit Account No. 50-1225 (VAS-4761CONDIV). A duplicate copy of this sheet is enclosed.

RECEIVED
JUN 02 2004
TO 1700

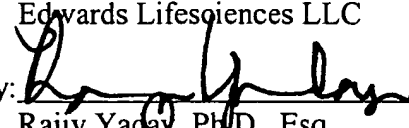
CONCLUSION

Accordingly, in view of the above amendments and remarks, it is submitted that this application is now ready for allowance. Early notice to this effect is solicited. If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned at (949) 250-6801.

If an appropriate payment does not accompany or precede this submission, the Commissioner is hereby authorized to charge any required fees, such as under 37 C.F.R. §§ 1.16 or 1.17, including any petition for extension of time, or to credit any overpayment, to Deposit Account No. 50-1225 (VAS-4761CONDIV).

Dated: May 21, 2004

Respectfully submitted,

Edwards Lifesciences LLC
By: 
Rajiv Yadav, Ph.D., Esq.
Registration No. 43,999
Edwards Lifesciences LLC
Law Department
One Edwards Way
Irvine, California 92614
Telephone: (949) 250-6801
Facsimile: (949) 250-6850

Customer No. 30452